



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R10-RCRA-2011-0973; FRL-9633-8]

Idaho: Proposed Authorization of State Hazardous Waste Management Program; Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: Idaho has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA). RCRA allows EPA to authorize State hazardous waste management programs if EPA finds that such programs are equivalent to and consistent with the Federal program and provide adequate enforcement of compliance. EPA has reviewed Idaho's application, has preliminarily determined these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: Comments on this proposed rule must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2011-0973 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: kocourek.nina@epa.gov.[mailto:](mailto:kocourek.nina@epa.gov)
- Mail: Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT-122, Seattle, Washington 98101.
- Hand Delivery: Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT-122, Seattle, Washington 98101. Such deliveries are only accepted during the normal business hours of operation; special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-RCRA-2011-0973.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding legal holidays. The EPA Region 10 Library telephone number is (206) 553-1289.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT-122, Seattle, Washington 98101, e-mail: kocourek.nina@epa.gov, phone number (206) 553-6502.

SUPPLEMENTARY INFORMATION:

I. Proposed Authorization Revision

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have we made in this proposed rule concerning authorization?

EPA has preliminarily determined that Idaho's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Idaho final authorization to operate its hazardous waste management program with the changes described in the authorization application. Idaho will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates

under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

C. What will be the effect if Idaho is authorized for these changes?

If Idaho is authorized for these changes, a facility in Idaho subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions, which includes, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

D. What happens if EPA receives comments on this action?

If EPA receives comments on this action, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Idaho previously been authorized for?

Idaho initially received final authorization for its hazardous waste management program effective April 9, 1990 (55 FR 11015, March 29, 1990). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005), February 26, 2007 (72 FR 8283, February 26, 2007), and December 23, 2008 (73 FR 78647, December 23, 2008).

F. What changes are we proposing?

On October 25, 2011, Idaho submitted a program revision application requesting authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2010. Idaho incorporated the delegable Federal regulations by reference in the following provisions of the Idaho Administrative Procedures Act (IDAPA): 58.01.05.001 through 58.01.05.010; 58.01.05.011 with the exception of the 4th sentence; 58.01.05.012; 58.01.05.013; 58.01.05.015 through 58.01.05.018; 58.01.05.356.01; and 58.01.05.998.

This authorization revision request includes the following Federal rules for which Idaho is being authorized for the first time: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (73 FR 57, January 2, 2008); NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (73 FR 18970, April 8, 2008); F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (73 FR 31756, June 4, 2008); Revisions to the Definition of Solid Waste (73 FR 64668, October 30, 2008); Academic Laboratories Generator Standards, Alternative Standards for Hazardous Waste Determination and Accumulation (73 FR 72912, December 1, 2008); Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (75 FR 1236, January 8, 2010); Hazardous Waste Technical Corrections and Clarifications (75 FR 12989, March 18, 2010); and Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010). EPA proposes to revise the state's authorized hazardous waste program in its entirety through July 1, 2010. Notice and an opportunity for the public to comment on this proposed authorization revision action are being provided at this time.

G. Where are the revised state rules different from the Federal rules?

Under RCRA 3009, EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are not authorized. State rules that are equivalent to, and State rules that are more

stringent than, the Federal program may be authorized, in which case they are enforceable by EPA. This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized and discusses certain portions of the Federal program that are not delegable to the State because of the Federal government's special role in foreign policy matters.

EPA does not authorize States to administer Federal import and export functions in any section of the RCRA hazardous waste regulations. Even though States do not receive authorization to administer the Federal government's import and export functions, found in 40 CFR part 262, subparts E, F and H, State programs are still required to adopt the Federal import and export provisions to maintain their equivalency with the Federal program. The State amended its import and export rules to include the Federal rule on Organization for Economic Cooperation and Development (OECD) Requirements; Export Shipments of Spent Lead-Acid Batteries (75 FR 1236, January 8, 2010). The State's rule is found at IDAPA 58.01.05.006. EPA will continue to implement those requirements directly through the RCRA regulations.

EPA has found that the State's Emergency Notification Requirements, (IDAPA 58.01.05.006.02), are more stringent than the Federal program. This is because the State's regulations require that the State Communications Center be contacted along with the Federal Center. EPA has found that the State's statutory requirement requiring hazardous waste generators and commercial hazardous waste disposal facilities to file annual hazardous waste generation reports, Idaho Code Section 39-4411(4) and 39-4411(5), to be more stringent than the Federal program. EPA will authorize and enforce these more stringent provisions.

H. Who handles permits after the authorization takes effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

I. What is codification and is EPA codifying Idaho's hazardous waste program as authorized in this proposed rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). This is done by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart N for this authorization of Idaho's program revision until a later date.

J. How would authorizing Idaho for these revisions affect Indian country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program on these lands.

II. Statutory and Executive Order Reviews

This proposed rule seeks to revise the State of Idaho's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This proposed rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866 and 13563

This action will authorize revisions to the federally approved hazardous waste program in Idaho. This type of action is exempt from review under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and Executive Order 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this proposed action will not have a significant impact on small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no

additional requirements beyond those imposed by State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

5. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule proposes to authorize pre-existing State rules in the CFR. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with officials of the State of Idaho Department of Environmental Quality in developing this action. In the spirit of EO 13132 and consistent with EPA policy to

promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because it proposes to authorize pre-existing State rules. Thus, EPA has determined that Executive Order 13175 does not apply to this rule. EPA specifically solicits comment on this proposed action from tribal officials.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it proposes to authorize pre-existing State rules.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a “significant regulatory action” as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action does not involve technical standards. Therefore EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action proposes to authorize pre-existing State rules which are equivalent to, and no less stringent than, existing Federal requirements .

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 13, 2012.

Dennis J. McLerran

Regional Administrator, EPA Region 10

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